

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

CRL.A.No. 111 of 2002()

CC.90/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

APPELLANT: COMPLAINANT

N.R.M.RAMASWAMI, RESIDING AT 18/300,
ANJANGADI ROAD, POOTHOLE, THRISSUR.

BY ADV. SRI.V.CHITAMBARESH
SRI.KRISHNA PRASAD. S

RESPONDENTS: ACCUSED/NOT PARTY

1. V.R.PALANISWAMI, PARTNER, M/S. NANDI BORE
WELLS, RESIDING AT 11/VI, AMARJOTHI GARDENS,
IIND STREET, KANGAYAM ROAD, TIRIPUR - 638 604,
CBE DISTRICT, TAMIL NADU.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.T.RAJASEKHARAN NAIR
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 111 of 2002

Dated this the 15th March, 2007.

J U D G M E N T

PW.3 is the complainant. He alleged that the first respondent, accused, had issued Ext.P1 cheque, for an amount of Rs.89,167/=. Because of its dishonour and non settlement of the accounts, when demanded by the complainant, a complaint was preferred as C.C.No.90/1994, on the file of the Judicial First Class Magistrate Court-I, Thrissur. Three witnesses were examined and six documents were marked on the side of the complainant, and two witnesses were examined and six documents marked, on behalf of the first respondent, accused. The lower court found, accepting Ext.D5 agreement and the involvement of the complainant on behalf of the accused before DW.1, a head clerk working in Kerala Water Authority Division, Thrissur, the complainant came in possession of a blank cheque signed, and kept in the office, for the business purpose of establishment of the accused, by the complainant. Therefore, the complaint was dismissed and the accused acquitted. Hence, this appeal.

2. Ext.D5 is an agreement written in Tamil between the complainant and the accused, Ext.D6 being its translation in English. The signature of the appellant in it has been denied. It is contented by the counsel for the appellant that none of the attestors to Ext.D5 had been examined before the court below. The appellant also did not take any steps to have his signature in Ext.D5 examined by an expert for an authoritative conclusion. As the appellant has taken up the stand that he had no contact with the accused, DW.1 was examined and Exts.D1 to D4 were brought into evidence, to show that the appellant had been continuously representing the accused before DW.1, in connection with the digging and operating the bore well. It is because of these reasons that the court below came to the conclusion that the appellant was not speaking the truth. The court also came to the finding that the appellant had access with the documents including the signed cheques of the accused. But when I go through the evidence, I do not find any material to show that though the appellant had transactions on behalf of the accused with the Kerala Water Authority, as deposed by DW.1, there is nothing to show that he had committed theft of Ext.P1 cheque from the possession of, or from the office of the accused. Ext.D5 also requires a further proof. In such circumstances, I am of the view that an

opportunity be given to both sides to raise their contentions, by adducing further evidence. Therefore, I am not discussing the facts on merit.

3. Hence, I set aside the impugned judgment, dated 16.8.1994, and restore C.C.No.90/1994, to the file of the Judicial First Class Magistrate Court-I, Thrissur.

4. The parties shall appear before the court below on 24.4.2007. This case being of the year 1994, the learned Magistrate shall give utmost priority for the disposal of the same. The parties are at liberty to adduce evidence required as per the law, if they are so advised. The matter shall be disposed of, at the earliest, and in any case, within four months from the date of appearance of the parties before that court.

Criminal Appeal is allowed as above.

**J.M. JAMES,
JUDGE**

nj.

J.M. JAMES, J.

Criminal Appeal No.111 of 2002

J U D G M E N T

Dated: 15th March, 2007.
